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OFFICE OF PETITIONS

In re Application of
Harada
Application No. 10/688,541
Filed: October 17, 2003
Attorney Docket No. 2001JP309:DECISIONS ON PETITIONS
:UNDER 37 CFR §1.78(a)(3)
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This is a decision on the petition under 37 CFR §1.78(a)(3) filed on May 4, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §120 and 365 (c) for the benefit of prior- filed PCT application no. PCT/JPO2/03760 filed April 16, 2002.

The petition is **Dismissed**.

As to the benefit claim under 37 CFR §1.78(a)(3):

A petition for acceptance of a claim for late priority under 37 CFR §§1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR §§1.78(a)(3) must be accompanied by:

- 1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

Petitioner has failed to provide item (1) in the appropriate manner as outlined in 37 CFR 1.121. The reference to the above-noted, prior- filed nonprovisional application was not included in the manner specified in 37 CFR 1.78(a)(2) (i.e. in an ADS or in an amendment to the first sentence

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following the title of the specification). The reference to the prior filed nonprovisional application was supplied in the petition rather than in an amendment within the meaning of 37 CFR 1.121, which requires each section of an amendment document (eg specification amendments, claim amendments, drawings amendments and Remarks) must begin on a separate sheet.

As to item (3), petitioner has failed to provide a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional.

Accordingly, before the petition under 37 CFR 1.78 (a)(3) can be granted an appropriate reference within the meaning of 35 USC 120 and 37 CFR 1.78 (a)(2) must be submitted.

Further correspondence with respect to this matter may be addressed as follows:

By mail:

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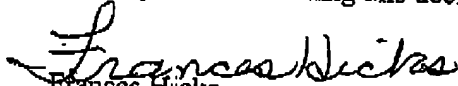
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Any inquiries concerning this decision may be directed to Charlema R. Grant at (571) 272-3215.


Frances Hicks
Petitions Examiner
Office of Petition